IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8146 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT INSECTICIDES LTD. - Petitioner(s)
Versus
MITHABHAI CHHITUBHAI MAKWANA - Respondent(s)

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Appearance :
MR JAY AMIN for SINGHI & BUCH ASSO. for Petitioner(s) : 1,
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/07/2007

ORAL JUDGMENT

Shri Jay Amin, learned counsel for the petitioner; Shri P.H.Pathak, learned counsel for the respondent.

2. The petitioner establishment, being aggrieved by the award dated 11.1.2000 passed by the learned Labour Court, Bharuch, in Reference [L.C.B.] No. 198/90 [old Reference [L.C.B.] No. 595/87] is before this Court with a submission that the award made by the learned court below is patently illegal and is based on surmises and conjectures.

3. The short facts, necessary for disposal of the of the present writ application are that the respondent workman was appointed as Helper on 12.7.82 and worked up to the year 1986. In different years, he remained unauthorizedly absent, therefore, a show cause notice was issued to him. On 20.11.86, a charge sheet was served upon the workman, in reply to which, he admitted his wrong but however, submitted that as his mother was mentally sick and bodily infirm and as he was required to discharge social liabilities, he had to go on unauthorized leave. Despite his admission, an inquiry was conducted; witnesses were examined; however, the respondent workman did not cross-examine any

witnesses nor led any defence evidence. On 22.11.86, a notice relating to proposed punishment was issued to which the workman replied to in 1987 and prayed for clemency. On 7.2.87, establishment, finding the present to be an extreme case, directed removal of the workman w.e.f. 12.2.87. The workman thereafter got the matter referred to the Labour Court. The workman submitted his claim statement and the present petitioner filed written statement; the parties led evidence and even in the evidence, the workman admitted that he remained on unauthorized absence but he however, submitted that his mother was unwell and as he was the only male member in the family and as he was required to attend his mother, he had to go on unauthorized leave. Even before the Labour Court, he submitted that he had to discharge social and family liabilities, therefore also, he could not regularly work. The Labour Court, after hearing the parties, despite holding that the workman remained unauthorizedly absent, however, held that in view of the explanation

submitted by the workman, punishment of removal could not be awarded. It accordingly set aside the punishment and directed reinstatement of the workman with 40% back wages. Being aggrieved by the said award, the petitioner establishment is before this Court.

4. Shri Jay Amin, learned counsel for the petitioner submits that in the period of four and half years, the workman remained unauthorizedly absent for a period of 310 days and under the circumstances, present was not a case for showing any clemency or to accept any explanation of the workman. He submitted that the learned Labour Court was unjustified in holding that the punishment was shockingly disproportionate to the misconduct committed, according to him, when a person becomes a habitual absentee, then, it would simply show that such person is not interested in the service.

5. Shri P.H. Pathak, learned counsel for the respondent-workman on the other hand, submitted that the learned Labour Court, if has accepted

the defence of the workman and has recorded a finding that the workman under the circumstances which were beyond his control, had to remain absent, then, this Court should not interfere in the matter. He, however, submitted that the workman is ready and willing to forgo his entire back wages including the wages pendente lite, that is, the wages from the date of termination till date of the award and looking to the circumstances of the case, order of reinstatement be maintained.

6. True it is that in different years, the workman remained absent from the service and he did not obtain prior approval or permission nor obtained regularization of absence but the fact still remains that in the year 1983, he was confirmed in services and in the year 1985 he was promoted to the higher post. Confirmation in the year 1983 would mean that his earlier lapses were condoned and promotion in the year 1985 would lead to an irresistible conclusion that the establishment was not aggrieved by the unauthorized absence.

7. The question would be whether for the absence in the year 1986, capital punishment of removal could have been awarded.

8. The learned Labour Court, as a fact, has found that the workman was to look after his mentally sick and bodily infirm mother and he being the only male member in the family was required to discharge his social and family liabilities. Present is not a case where the Court has not given any reasons for finding that the punishment was shockingly disproportionate. The Labour Court has considered the reasons and has come to a conclusion that the punishment, looking to the explanation submitted by the workman would appear to be shockingly disproportionate to the misconduct.

9. I must hold that the learned Labour Court had jurisdiction to appreciate the evidence and unless it is shown that the findings are absolutely perverse, this Court under Article 227 of the Constitution of India shall not interfere into the findings which are based on appreciation of facts.

10. The order of reinstatement, for the reasons aforesaid cannot be interfered with, however, in view of the concession given by Shri Pathak, the award relating to the back wages and pendente lite back wages is hereby quashed and set aside. It is made clear that the workman would be entitled to reinstatement with effect from 11.1.2000 and he would not be entitled to any past monetary benefits.

11. The petition to the extent indicated above is allowed. Rule is made absolute to the aforesaid extent. No costs.

[R.S. GARG, J.]

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